

Sharanamma & Others

v.

M.D., Divisional Contr. NEKRTC

(Supreme Court Of India)

HON'BLE MR. JUSTICE DEEPAK VERMA HON'BLE MR. JUSTICE K.S.
RADHAKRISHNAN

C. A. Nos. 723-724 of 2012 (Arising out of SLP(C) Nos. 31670-31671 of 2009 |
19-01-2012

1. Leave granted.

2. Mr. Anirudh Sanganeria, Learned Counsel, appeared for Appellants and Mr. Sharana Gouda Patil, Learned Counsel appeared for Respondents.

3. Appellants as Claimants had filed a claim Petition MVC No. 97/2006, before Motor Accident Claims Tribunal and Fast Track Court-III, Raichur, (hereinafter referred to as 'Tribunal') for awarding compensation to them on account of death of Anneppa Swamy in a motor accident.

4. The accident had taken place on 30.11.2005. Deceased Anneppa Swamy was admittedly working as Driver of Respondent No. 1, that is, North-East Karnataka Road Transport Corporation (hereinafter shall be referred to as the 'Corporation').

5. The factum of death of Anneppa Swamy in a road accident on account of rash and negligent driving of Bus bearing Registration No. CA-38-F-267 driven by the other driver Balu Karagar, has not been disputed. It has also not been disputed that at the relevant point of time he was aged about 40 years and was working as driver on the buses operated by Respondent No. 1/Corporation. The claims Tribunal after appreciating the evidence available on record came to the conclusion that Appellants-claimants herein would be entitled to receive a total amount of Rs.11,76,400/- (Rupees Eleven Lakh Seventy Six Thousand and Four

Hundred only) together with interest at the rate of 6% per annum from the date of the Claim Petition till deposit.

6. Feeling aggrieved by the aforesaid award, passed by the Tribunal on 12.10.2006, the Respondent No. 1/Corporation preferred a Miscellaneous Appeal MFA No. 4235/2007, before the Division Bench of the High Court of Karnataka, Circuit Bench at Gulbarga. The Division Bench after having heard the matter and after perusal of the record, came to the conclusion that the salary of the deceased (Anneppa Swamy) could not have been worked out at Rs.9,559/- per month, assessed by the Tribunal. Indeed, it should be Rs.7,414/- per month and out of this, the net salary payable to the deceased (Anneppa Swamy) would come to Rs.5,083/- per month. Thus, the Division Bench, in its wisdom, worked out the salary of the deceased at Rs.5,000/- per month, deducting one-fifth of the same, loss of dependency of the Appellants was worked out at Rs.4,000/- per month. The High Court then fixed the total amount of compensation at Rs.7,22,000/- as against Rs.11,76,400/- assessed by the Tribunal.

7. Feeling aggrieved by reduction of the compensation by the High Court as against the award of Tribunal, the Appellants/Claimants are in appeal before us.

8. The Salary Certificate of deceased (Anneppa Swamy) has been filed before us. The date of payment of salary as per this Salary Certificate is 07.11.2005. In the said certificate, the gross wages payable to the deceased (Anneppa Swamy) is shown as RS.9,559/-. The actual wages paid comes to RS.5,565/-, after making certain deductions from the same.

9. Learned Counsel for Respondent/Corporation strenuously contended before us that the Salary Certificate was not proved in accordance with law before the Tribunal. Thus, the Tribunal had committed an error in taking the aforesaid amount of RS.9,559/- as the salary of the deceased (Anneppa Swamy) for one month.

10. However, the arguments advanced by Learned Counsel for Respondent No. 1/Corporation is neither convincing nor acceptable to us.

11. The document clearly shows that it is the Wage Slip issued by Respondent No. 1/Corporation wherein all details of the income of the deceased (Anneppa Swamy) have been reflected. The document does not reflect or show that the same has been created or manufactured by the Appellants for the purposes of getting higher compensation. Issuance of the aforesaid Wage Slip by Respondent No. 1/Corporation has not been challenged before us.

12. Issue No. 4 dealing with the amount of compensation to be awarded to the Appellants was decided by Tribunal in favour of the Appellants and against the Respondent No. 1/Corporation, holding therein that they would be entitled to receive RS.11,76,400/- plus 6% interest. There was no reason for the High Court to have come to the conclusion that deceased (Anneppa Swamy) was getting only a sum of RS.5,000/- per month. The compensation awarded by the Tribunal was just, proper and reasonable. Usual deduction of one-third was also made by the Tribunal in the carry home salary by the deceased (Anneppa Swamy). The Tribunal had recorded categorical finding that dependency of the Appellants would be at the rate of RS.6,800/- per month which has been reduced to RS.4,000/- by the Division Bench of the High Court, without assigning any cogent and valid reasons thereof. The Tribunal was also justified in applying the multiplier of 14, looking to the age of deceased (Anneppa Swamy). In fact, after having critically examining the award of the Tribunal, we find no illegality and perversity in the same and total amount of compensation was rightly assessed at RS.11,76,400/- by it and the amount of interest has also been reasonably worked out at the rate of 6% per annum only.

13. However, still the Division Bench of High Court thought it fit to reduce the same. The reasonings assigned by Division Bench do not appeal to us. We are, therefore, of the considered opinion that it is a fit case where the amount of compensation awarded by Tribunal has to be restored and the judgment and order passed by Division Bench has to be set aside. We, accordingly, do so.

14. When an Appeal is filed under Section 173 of the Motor Vehicles Act, 1939 (hereinafter shall be referred to as the 'Act'), before the High Court, the normal Rules which apply to Appeals before the High Court are applicable to such an Appeal also. Even otherwise, it is well settled position of law that when an Appeal is provided for, the whole case is open before the Appellate Court and

by necessary implication, it can exercise all powers incidental thereto in order to exercise that power effectively.

15. A bare reading of Section 173 of the Act also reflects that there is no curtailment or limitations on the powers of the Appellate Court to consider the entire case on facts and law.

16. It is well settled that the right of Appeal is a substantive right and the questions of fact and law are at large and are open to Review by the Appellate Court. Thus, such powers and duties are necessarily to be exercised so as to make the provision of law effective.¹⁷ Generally, finding of fact recorded by Tribunal should not be interfered with in an Appeal until and unless it is proved that glaring discrepancy or mistake has taken place. If the assessment of compensation by the Tribunal was fair and reasonable and the award of the Tribunal was neither contrary nor inconsistent with the relevant facts as per the evidence available on record then as mentioned hereinabove, the High Court would not interfere in the Appeal.

18. In the case in hand, nothing could be pointed out to us as to what were the glaring discrepancies or mistakes in the impugned Award of the Tribunal, which necessitated the Appellate Court to take a different view in the matter.

19. In the light of the aforesaid discussion, we are of the opinion that the Appellants would be entitled to receive in all from the Respondent No. 1/Corporation a sum of RS.11,76,400/-, together with interest at the rate of 6% per annum from the date of the claim petition filed in the Tribunal till it is actually paid. We also direct the Respondent No. 1/Corporation to bear the cost of litigation throughout and counsel's fees at RS.10,000/-

20. These Appeals stand allowed to the aforesaid extent.